facts to be proved to make out a cause of action, presents a new rule of substantive law, and puts accidents on carriers in a different class from other accidents where the maxim is applicable. It is quite possible that this result is justified by public policy, but the reasoning and terminology used in reaching it are open to serious criticism.

PLEADING—MISJOINDER OF MASTER AND SERVANT AS PARTIES DEFENDANT—FEDERAL EMPLOYERS' LIABILITY ACT.—A railway employee sued the company and its engineer jointly for personal injuries. The plaintiff's theory of recovery against the engineer was based on a common-law right, while recovery was sought against the company under the Federal Employers' Liability Act. The state court held that there was a fatal misjoinder. The plaintiff secured a writ of *certiorari*. *Held*, that the refusal to permit the joinder in the state court did not violate any right conferred by federal law. *Lee v. Central of Georgia Ry.* (1920) 40 Sup. Ct. 254.

An action brought in a state court by a resident plaintiff against a resident and a non-resident defendant cannot be removed to a federal court on grounds of diversity of citizenship, where both defendants are proper parties to the action. *Chesapeake & Ohio Ry. v. Dixon* (1900) 179 U. S. 131, 21 Sup. Ct. 67; *Dougherty v. Yazoo & M. V. Ry.* (1903, C. C. A. 5th) 122 Fed. 205. The decisions of the federal courts are not in accord as to whether or not a master and his negligent servant are proper parties defendant, but as far as the question of removal is concerned such joinder is proper. *Alabama G. S. Ry. v. Thompson* (1906) 200 U. S. 206, 26 Sup. Ct. 161; *Southern Ry. v. Miller* (1910) 217 U. S. 209, 30 Sup. Ct. 450. But by express provision, no action based on the Federal Employers' Liability Act can be removed upon the ground of diverse citizenship. *Eng v. Southern Pac. Ry.* (1913, D. Ore.) 210 Fed. 92; *Kansas City So. Ry. v. Leslie* (1915) 238 U. S. 599, 35 Sup. Ct. 844. As the only question which was before the Supreme Court in the instant case was one of state court procedure, its decision is obviously correct, but the soundness of the state court decision is questionable. A master is "liable" with his servant for an injury caused by the servant at his express direction. *Hewett v. Swift* (1862) 85 Mass. 420; *Brokaw v. New Jersey Ry.* (1867, Sup. Ct.) 32 N. J. L. 328. By a preponderance of authority a joinder of master and servant is allowed, although the master's liability be based solely on the doctrine of *respondeat superior*. *Able v. Southern Ry.* (1906) 73 S. C. 173, 52 S. E. 962; *Whalen v. Pennsylvania R. R.* (1906, Sup. Ct.) 73 N. J. L. 192, 63 Atl. 993; *contra, Parsons v. Winchell* (1850) 59 Mass. 592; *Western Union v. Olsson* (1907) 40 Colo. 264, 90 Pac. 841. Likewise where the liability of the master is imposed by statute. *Rogers v. Ponet* (1913) 21 Calif. App. 577, 132 Pac. 851; *Doyle v. St. Paul Union Depot Co.* (1916) 134 Minn. 461, 159 N. W. 1081; *contra, Thompson v. Cincinnati N. O. & T. P. Ry.* (1915) 165 Ky. 256, 176 S. W. 1006. The fact that the different theories of recovery may require different measures of damages is not an insurmountable obstacle to a joinder, for exemplary damages have been allowed against one defendant while only compensatory damages were allowed against the other defendants. *Rauma v. Lamont* (1901) 82 Minn. 477, 85 N. W. 236; *Mauk v. Brundage* (1903) 68 Ohio, 89, 67 N. E. 152. Since an injured third party may prosecute to judgment either the master, the negligent servant, or even both separately according to the majority American view, it is submitted that the liability of master and servant is essentially joint, regardless of whether the theory of recovery against the master is based on the common law or upon a statute; and that the chances of securing practical justice will be increased by allowing a joinder, as it will avoid a multiplicity of suits and facilitate the task of proving a cause of action.

PROPERTY—ADVERSE POSSESSION—DECREE OF OUSTER.—The plaintiff brought an action of trespass to try her "title," which she alleged was obtained by the

adverse possession of her grantors and herself for the statutory period. During this statutory period a decree of ouster had been issued against the plaintiff's grantors, but actual possession had not been taken under the decree. *Held,* that the plaintiff had acquired no title, because the decree of ouster had interrupted the running of the statute and she could not tack the time of her grantor's possession prior to the decree. *Conn v. Houston Oil Co.* (1920, Tex. Civ App.) 218 S. W. 137.

Persons claiming by adverse possession can tack the time of their possession to the period of possession of those under whom they claim and from whom they derive their interest. See *Christian v. Bulbeck* (1916) 120 Va. 74, 102, 90 S. E. 661, 669. The only thing necessary to tack periods of adverse possession is "privity of possession" and exists whenever one holds the property under, or for another. *Vanderbilt v. Chapman* (1916) 172 N. C. 809, 90 S. E. 993. The running of the statute of limitations is interrupted by an action to quiet title, and adverse possession cannot be based upon possession for the statutory period if during such time a judgment was rendered against the person adverse to his title. *Perry v. Eagle Coal Co.* (1916) 170 Ky. 824, 186 S. W. 875; *contra, Forbes v. Caldwell* (1888) 39 Kan. 14, 17 Pac. 478. The continuity of adverse possession is broken by a decree requiring the occupant to convey the land, even if the actual possession is not disturbed. The decree has the effect of a voluntary conveyance. *Gower v. Quinlan* (1879) 40 Mich. 572. But an adverse possessor is not ousted merely by an action of ejectment brought against him. *Langford v. Poppe* (1880) 56 Calif. 73. And some courts hold that in order to interrupt the running of the statute in favor of the adverse possessor he must be actually deprived of possession. See *Bressler v. Powder River Gold Dredging Co.* (1919, Ore.) 178 Pac. 237, 239; *Milwee v. Waddleton* (1916, C. C. A. 9th) 233 Fed. 989. The apparent conflict can be explained by the theories upon which the courts proceed. Courts that base adverse possession upon demerit in the owner will ordinarily require actual taking of possession to interrupt the running of the statute; while courts that presume a grant to the holder of actual possession will hold that a decree adverse to that presumed grant stops the statute. The principal case seems to follow the latter theory, and if so, is logically sound. For a discussion of what constitutes adverse possession, see (1911) 20 YALE LAW JOURNAL, 226; (1913) 22 *ibid.*, 256.

RELEASE—FRAUD—RESCISSION—REASONABLE TIME.—The plaintiff, an illiterate, signed a release of a claim against the defendant insurance company, believing at the time that it was merely a receipt for the amount received on account to date. He discovered the mistake soon after, but neglected to bring an action on the original claim until two years later. *Held,* that he should not recover. *Kilgo v. Continental Casualty Co.* (1919, Ark.) 215 S. W. 689. McCulloch, C. J. and Humphreys, J., *dissenting.* (1920, Ark.) 218 S. W. 171.

The dissenting opinion points out that since the majority admitted that a tender of the consideration received for the release was not a condition precedent to a right of action on the original claim, the release was void, not voidable. This conclusion, however, does not necessarily follow. See (1920) 29 YALE LAW JOURNAL, 688. Nevertheless, it would seem that the conclusion itself is sound. *Malkmus v. St. Louis Portland Cement Co.* (1910) 150 Mo. App. 446, 131 S. W. 148; *Cleary v. Municipal Electric Light Co.* (1892) 65 Hun, 21, 19 N. Y. Supp. 951; see 2 Black, *Rescission and Cancellation* (1916) sec. 396. The release would therefore be wholly inoperative and should not affect the plaintiff's right of action in any way. See Anson, *Contract* (3d Am. ed. by Corbin, 1919) sec. 184. Assuming, however, that the release was merely voidable, it is at least questionable whether the court should find as a matter of law that by mere lapse of time the plaintiff had affirmed the release. The court here would seem to require that to avoid the lapse of the power of rescission by "conclusive presumption" that